

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

05/20/2002

CLERK OF THE COURT
FORM V000A

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

CV 2001-016641

FILED: _____

SHARON L BARDEN

ROBERT L STEWART JR

v.

GREAT WESTERN REMODELING L C

JONATHAN OLCOTT

PHX JUSTICE CT-CENTRAL
REMAND DESK CR-CCC

MINUTE ENTRY

This Court has jurisdiction of this Civil appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This matter has been under advisement and the Court has considered and reviewed the record of the proceedings from the trial Court, exhibits made of record and the Memoranda submitted.

Appellee correctly argues that the \$5,107 consulting fee paid to WRF Management was a reasonably foreseeable and necessary cost to discover the construction defects and mitigate the damages brought about by Appellant's questionable remodeling efforts. The record is replete with evidence that Appellee was simply trying to have a structurally sound kitchen, not trying to incur more costs or delay the project. Appellee gave Appellant ample opportunity to correct their construction

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defects - nearly three years - yet Appellant still managed to deliver sub-standard workmanship.

Arizona follows the Restatement (Second) of Contracts when determining breach of contract damages, in the absence of contrary statutory or case law authority. The Restatement provides that:

"Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.¹

A careful review of the record, coupled with common sense, tells me that Appellant should have reasonably foreseen that its failure to perform its work in a workmanlike manner (after nearly three years) would result in Appellee's retention of a consultant, such as Mr. Furman. Fortunately, Mr. Furman discovered the defects and mitigated Appellee's damages.

The Registrar of Contractors (ROC) is not a consulting service, as Appellant indirectly suggests. Once defects are *discovered*, a complaint is filed with the ROC. The ROC then investigates and ensures that the builder meets the minimum workmanship standards allowed in Arizona. Mr. Furman was hired to *discover* the defects, which were then *reported* to the ROC. Had Appellant executed the proper remedial measures to ensure that Appellee's home was structurally sound, and adhered to the city building codes, there would have been no need for a consultant.

In *Aries v. Palmer Johnson, Inc.*², the Court properly found that the amount paid to a consultant, hired to determine cause of the problem and to mitigate any further delays, was foreseeable and therefore recoverable in a breach of contract

¹ Restatement (Second) of Contracts, Section 351(1).

² 153 Ariz. 250, 735 P.2d 1373 (App. 1987).

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action, so long as the consulting fee was not related to trial preparation expert work or expert witness fees. In the case at hand, Mr. Furman's consulting fees were directly related to determining the cause of the problem (defects) and preventing further delay in the remodeling of Appellee's kitchen.

IT IS THEREFORE ORDERED affirming the trial court's judgment.

IT IS FURTHER ORDERED remanding this case back to the Central Phoenix Justice Court for all further and future proceedings.